IN THE MUNICIPAL COURT OF THE
CITY OF TALLAHASSEE, FLORIDA
DOCKET No. 68-7286

CITY OF TALLAHASSEE,)
Plaintiff,)

vs.

ROY DUANE CARLSON, JR.,)
Defendant.)

Trial before the HONORABLE EDGAR C. BOOTH, Judge of the above Court, held in the courtroom at City Hall, Tallahassee, Florida, on the 24th day of October, A.D., 1968, commencing at 10:00 o'clock A.M.

APPEARANCES:

For the Plaintiff,
City of Tallahassee:

HAYWARD V. ATKINSON
Assistant City Attorney
400 North Adams Street
Tallahassee, Florida

For the Defendant,
Roy Duane Carlson, Jr.:

APPEARED IN HIS OWN BEHALF

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THE COURT: Do you have any witnesses that you intend to call today?

MR. CARLSON: No. Your Honor, I don't.

THE COURT: Is the City ready?

MR. ATKINSON: Ready, Your Honor.

THE COURT: Is the defendant ready to go to trial?

MR. CARLSON: The defendant is ready, Your Honor, but, for the record, he'd like to object to the fact that his *request for a continuance of the trial* was rejected.

THE COURT: For the record, the request of the defendant for a continuance was denied. Will all of the witnesses please raise your right hand?

(THEREUPON THE WITNESSES WERE SWORN BY THE COURT.)

THE COURT: Does either side wish the rule invoked?

MR. ATKINSON: I think, for the purposes of preserving the facts of the trial, that we should invoke the rule, Your Honor.

THE COURT: All right, the rule is invoked. Were all of you present at the time that the rule was explained before? The purpose of the rule is to require that you not discuss the case during the time that this trial is going on. The only exception to this rule is that you can discuss it with the defendant or you can discuss it with Mr. Atkinson, who is the representative of the City. If you do discuss it during the time the trial is going on, make sure that the discussion is outside the hearing of any other witnesses. In other words, don't talk about the case; don't talk about your proposed testimony or the testimony which you gave until this case is completely over. Do all of you understand that? All right, if you will wait right outside where you'll be convenient and there's some chairs and some other things out there.

MR. ATKINSON: Mrs. Lillie, I'm going to call you as the first witness. You can take the stand right here.

THE COURT: Now, Mr. Carlson, you were present during the trial of the last case and I think probably you saw enough to understand the normal procedure. If you have any questions about what you should or should not do during the time that the trial is going on, I'll be glad to try to answer your questions for you. That is, insofar as the questions relate to the procedures and the rules of the Court. You may proceed.

MRS. CARLETON F. LILLIE, JR.

was produced as a witness and after having been first duly sworn by the Court, was examined and testified as follows:

Direct Examination

BY MR. ATKINSON:

Q State your name, please.

A Mrs. Carleton F. Lillie, Jr.

Q Mrs. Lillie, what is your occupation at the present time?

A Housewife.

Q Are you in any way connected with the movement for the George Wallace for President?

A Yes, I am.

Q What is that association, Mrs. Lillie?

A I am Leon County Chairman of Americans for Wallace and I'm officially from Montgomery, through my husband as area coordinator. He is the area coordinator for eleven counties and he made me Leon County coordinator.

Q I see. Now, did Mr. Wallace appear here on September the 20th of this year?

A Yes, he did.

Q Prior to his appearance here, were there arrangements made for the rental or leasing of what we designate as Capital Stadium?

A Yes, sir.

Q Did you handle that for the Wallace group?

A Yes, I did.

Q On this day of September the 20th, 1968, was Capital Stadium leased to Americans for Wallace in Leon County?

A Yes, sir.

Q How much was paid for the leasing of this?

A Fifty dollars.

Q To whom was that paid? Do you know?

A The City of Tallahassee.

Q Now, how was that paid?

A It was paid by check from Americans for Wallace in Mr. Cook's office in the City Hall.

Q All right. Now, do you recall the date that it was paid?

A I think it was September 16th or 17th; I'm not sure.

Q Did you receive a receipt for the payment?

A Yes, I did.

Q Let me show you this and ask you if that's a copy of that receipt?

A Yes, it is.

Q And what date was it paid?

A September 18th.

Q But the stadium was under lease to Americans for Wallace.

A Yes.

Q For the particular date for the purpose of Governor Wallace speaking here, is that correct?

A Yes.

MR. ATKINSON: I have no further questions.

MR. CARLSON: No questions.

MR. ATKINSON: I'd like to excuse this witness, if we may.

THE COURT: Is there any reason why this witness should not be excused?

MR. CARLSON: No reason.

THE COURT: You are excused. Thank you for coming.

MR. ATKINSON: Tell Herb Seckel to come in, please?

HERB SECKEL

was produced as a witness and after having been first duly sworn by the Court, was examined and testified as follows:

Direct Examination

BY MR. ATKINSON:

Q State your name, please.

A Herb Seckel.

Q Mr. Seckel, what is your occupation?

A City of Tallahassee, Deputy Auditor-Clerk.

Q For the City of Tallahassee?

A Right.

Q Were you employed as such Deputy Auditor and Clerk on September the 18th of this year?

A Yes, sir.

Q Did the City of Tallahassee, or through the City of Tallahassee, lease Capital Stadium to Americans for Wallace to be used on September the 20th?

A It was paid on the 18th. It does not say which, what date but it says "payment for the use of Capital Stadium, Americans for Wallace, Leon County Committee, fifty dollars."

Q All right, was a receipt written for that?

A Yes, sir.

Q Do you have a copy of that receipt?

A (Witness hands paper to Mr. Atkinson.)

Q Was this taken from the official records of the City of Tallahassee?

A Xeroxed right from the receipt book.

MR. ATKINSON: All right, sir. If it please the court, the City offers this into evidence as City's Exhibit No. "1".

THE COURT: You want to look at it?

MR. CARLSON: May I inquire?

Cross Examination

BY MR. CARLSON:

Q What is the usual fee that a group or organization would pay for renting Capital Stadium?

A It depends on what it is. I don't have them with me. There are set rates for the high schools, the football games; there's a different rate for during the day without using the lights, and in some cases they just charge for the use of electricity, and—

Q Is Fifty dollars standard?

A I can't say what is or what is not standard because the Stadium Committee is the one that sets the rates.

Q Can you give me an idea of the price range?

A For something like this?

Q For something like this.

A No, I don't believe I can because it's not used too often. For an example, the Jaycees on the 4th of July use it but they pay for just the utilities.

Q I see. Would you say, in your opinion, that fifty dollars is cheap?

A In my opinion it's real cheap.

Q I see. Do you think that this would have anything to do with the party renting the stadium?

A No, sir.

Q Or the speaker?

A Now, where I say "cheap," I mean for football games and everything because we handle the money for this and I know what it costs to run the field out there, but the Stadium Board sets all rates.

Q I see. Can any party rent this stadium?

A As far as I know, yes.

MR. CARLSON: No further questions.

THE COURT: Do you have any objections to the introduction of that piece of paper into evidence?

MR. CARLSON: I can see none.

THE COURT: This receipt is a xerox copy from a record; is that a normal or standard record maintained by the City of Tallahassee?

A Yes, sir.

THE COURT: Is it maintained under your supervision?

A Right.

THE COURT: You wish to have it introduced?

MR. ATKINSON: Yes, sir.

THE COURT: It shall be received.

Redirect Examination

BY MR. ATKINSON:

Q Mr. Seckel, who makes up the committee that leases the stadium, or that manages the stadium?

A I'm not sure who they all are now, but J. D. Williamson is one–

Q I don't mean by individual names.

A Oh.

Q I mean by what group. What group is it. How is the group selected?

A The County Commission, City Commission and the School Board.

Q They select the group and then when anybody wants to lease this stadium, they pass upon whether it should be leased or whether it should not and what the charge should be for it, is that right?

A Yes, except for set rates, like I mentioned, for junior high schools during the day or night, then, we're free to rent it to them without coming through the committee.

O I see. Did--Was the City paid the fifty dollars that the receipt was written for?

A Yes, sir.

Q How was that paid?

A It was paid by a check. I can't tell you who signed the check or how it was made out.

Q Was it later deposited?

A Yes, sir.

Q Was it deposited by you?

A It was deposited by Mrs. Claudia Barber, who is in charge--

Q Under your supervision?

A Yes, sir.

Q Do you have a copy of that deposit slip?

A Yes, sir.

Q And what account was that deposited in?

A Tallahassee Stadium Operation and Maintenance Account.

Q And that was for this particular bill for this particular stadium out here.

A Yes, sir.

MR. ATKINSON: We offer this into evidence as the City's Exhibit No. "2".

THE COURT: Do you wish this introduced?

MR. ATKINSON: Yes, sir.

THE COURT: Do you have any objections?

MR. CARLSON: No objections.

THE COURT: It shall be received.

Q Mr. Seckel, is the Capital Stadium located within the corporate limits of the City of Tallahassee?

A I'm not sure.

MR. ATKINSON: I can ask someone else to testify to that. I have no further questions.

THE COURT: Do you have any questions you want to ask?

MR. CARLSON: No questions.

THE COURT: Is there any reason why this witness can't be excused?

MR. ATKINSON: I'd like to excuse him, if I may, sir.

THE COURT: Do you have any objections?

MR. CARLSON: No objections.

THE COURT: You are excused.

MR. ATKINSON: Call Sgt. Beagles.

EARL BEAGLES

was produced as a witness and after having been first duly sworn by the Court, was examined and testified as follows:

Direct Examination

BY MR. ATKINSON:

Q State your name, please.

A Earl Beagles.

Q What is your occupation, sir?

A Tallahassee Police Officer.

Q Are you a sergeant at the Tallahassee Police Department?

A Yes, sir.

Q Were you such police officer on September the 20th of 1968?

A Yes, sir.

Q Did you have special assignment on that day?

A Yes, sir.

Q What was that special assignment?

A For security purposes at the south gate of Capital Stadium.

Q What was taking place on that particular day?

A That's when Mr. Wallace was in town for a speech.

Q Was he speaking on behalf of his candidacy as president?

A Yes, sir.

Q Now, prior to this or during this assignment, were you given any special instructions by anyone so far as security was concerned?

A Yes, sir.

Q By whom were you given special instructions?

A Chief Bennett.

Q By anyone else?

A Yes, sir, a secret service officer.

Q Was this secret service officer assigned to the George Wallace group?

A Yes, sir.

Q Addressing himself to the secret service officer, where and to whom did he give instructions?

A He gave it to the officers that was inside of Capital Stadium that would be on security post inside the stadium.

Q All right, now, where was that? Where was these instructions given?

A They was given at the north end of Capital Standium in a group.

Q Were they given on September the 20th?

A Yes, sir.

Q At approximately what time?

A Approximately nine-thirty or ten o'clock.

Q In the morning.

A Yes, sir.

Q All right, sir, what were the instructions that were given to you by the secret service assigned to Mr. Wallace?

A Well, the instructions was that, be on the lookout for anything that looked suspicious coming through the gate or rolled up in newspapers or anything that looked obvious and anything that looked like might cause trouble; that we didn't expect any and we wasn't looking for any and to just be on the lookout for it, in those lines.

Q All right, sir, now what instructions did you receive from Chief Bennett?

A My instructions from Chief Bennett was that the protestors carrying signs would protest out on Paul Russell Road and they would stay in this area of peaceful demonstration, and that we wasn't going to allow any inside of Capital Stadium, for the purpose of holding down any kind of trouble that might exist inside.

Q All right, now, were you instructed to prohibit signs that would tend to create trouble from being admitted inside of Capital Stadium?

A Yes, sir.

Q Those were your instructions.

A Yes, sir.

Q All right, sir, did you happen to see the defendant here, Mr. Roy Carlson, Jr., on that particular day?

A Yes, sir.

Q Where did you see him, Sergeant Beagles?

A At Capital Stadium at the south gate.

Q Is that were you were stationed?

A Yes, sir.

Q And who was stationed there with you?

A Sergeant Sullivan and Officer Murray.

Q All right, sir, when you first saw Mr. Carlson, what was he doing?

A When I first saw Mr. Carlson, he was approximately twelve or fifteen foot inside the gate, came in with kindly a large group of people, and what got my attention was when Mr. Carlson came in the gate, after he'd entered about fifteen feet inside, he held a sign in front of him, and I seen the sign and I heard some remarks made from a group of people that were standing inside of the Stadium.

Q Did you see the sign yourself?

A Yes, sir.

Q Did you see any writing on the sign?

A Yes, sir.

Q What writing was on the sign?

A "Racism is Destroying my Country."

Q Now, what size sign was this?

A Approximately two foot by three.

Q All right, in what size letters were the words printed?

A Approximately four to six inches.

Q All right, sir, what did you do then, Sergeant Beagles?

A I introduced myself to Mr. Carlson as a police officer of the Tallahassee Police Department, that I wanted to talk to him—

Q All right.

A —concerning the sign that he had, and this was when I'd already heard these remarks.

Q All right, what remarks had you heard, Sergeant Beagles?

A Be blunt about it?

Q I want you to be honest about it.

A All right, I heard a couple of remarks from these people standing in a group that "if the police lets him in, we're going to kick his ass."

Q All right.

A So this was when—

Q Could you identify any of the people who made these remarks?

A No, sir, it was, like I said, fifteen or twenty people standing in a group.

Q All right, sir, then what did you do?

A This was when I got Mr. Carlson and identified myself and told him I wanted to talk to him concerning the sign. So me and Officer Murray started talking with Mr. Carlson concerning the sign and—

Q Where did you take him to talk?

A Well, we started talking first inside where—a few feet from where I'd stopped him inside the stadium, and then it seemed he wanted to be a little bit rude about it; took him outside the gate and I told Mr. Carlson that it looked like, for his own protection, he's going to have to leave the sign outside; that we didn't participate no trouble and we wasn't going to have any trouble, and I asked Mr. Carlson if he'd lay his sign down and go on in, just like everyone else was going in, everything would be just fine.

Q All right, what was his reply?

A He says "What you going to do to me if I don't lay it down?" I says "Well, the way the circumstances are right now, I'll have to place you under arrest."

Q All right, sir, what happened then?

A So Mr. Carlson stood there a few minutes with his sign; I came on back inside on my post; Mr. Carlson came back in; I took Mr. Carlson outside the gate some twenty-five feet from the entrance and I said "Mr. Carlson, I'm being just as nice to you as I can be." I says "To your advantage, I would like for you to leave the sign outside and go on in like everyone else."

Q What was his response to that?

A He said that he was going in; that I would have to arrest him, and I said "I'll assure you that I will arrest you if you go in." So I went back up to the gate; Mr. Carlson stood there for some three, four or five minutes, then he came up to the gate and I said "Mr. Carlson, I'm going to arrest you" and he said "What for." I said "for Disturbing the Peace," and he said Well, you're going to have to arrest me," and he put the sign up in front of him and came on through and I got him by the arm; Sergeant Sullivan got him by the other arm—

Q Wait just a minute. Did he actually push you with the sign?

A Well, in a sense of speaking, yes, sir, with the sign.

Q Now, he had been warned not to come back up.

A Yes, sir, this was the third time.

Q The third time.

A Yes, sir.

Q Now, you charged him with Disturbing the Peace.

A Yes, sir.

Q Had you heard any other comments about Mr. Carlson or his sign, particular his sign, prior to placing him under arrest?

A Well, one unidentified man made the statement "How much would it cost if he got in a fight."

Q Indicating to you what, Sergeant Beagles?

A Indicating that, evidently, he might have been one in the group, I don't know, that made the statement about "he's going to kick his ass."

Q I see. All right, in what way was Mr. Carlson disturbing the peace?

A In what way?

Q Yes, sir.

A Well, with this sign, with the reading it had on it, and for his own protection, of the conversation that was heard from this group of people inside, I felt like at this time, bending over backwards with Mr. Carlson, being as nice as we could be with him and he still insisted, it was for his own protection that at this time we placed him under arrest for Disturbing the Peace.

Q All right, sir, let's go back a little bit. Were there other demonstrators at Capital Field on this particular day and time?

A Yes, sir.

Q Where were they?

A They were out on Paul Russell Road.

Q All right, were they receiving police protection out there?

A They was policemen all around them, yes, sir.

Q And there were no incidents, were there?

A No, sir, none whatsoever.

Q To your knowledge, were there any signs of this type admitted into Capital Stadium?

A No, sir.

Q In your opinion as a police officer—How long have you been a police officer, Sergeant Beagles?

A Two years, sir.

Q During that time, have you witnessed things that seemed to excite people and disturb people to the point of where there is an actual disturbance?

A Yes, sir.

Q In your opinion as a police officer, and based upon your experience, would the admission of Mr. Carlson to this particular gathering at this particular time have caused some type of riot or disturbance or fighting?

A Yes, sir.

Q And you felt that—and based upon your experience and based upon your duties as a police officer, that this man was actually disturbing the peace.

A Yes, sir, yes, sir.

MR. ATKINSON: I have no further questions.

THE COURT: Do you want to ask him any questions?

MR. CARLSON: Yes, Your Honor, I do.

Cross Examination

BY MR. CARLSON:

Q A few points before I begin. The secret service gave you instructions to be on the lookout for suspicious items, suspicious characters and things like this. Do you think it rather incongruous that a man who goes with Mr. Wallace all around the country would say something that would keep descent out of this rally, in Tallahassee specifically? What I'm asking you is why would a secret service man, if he did say this, ask the Tallahassee Police Department to prohibit descent in this rally, when every night on the news we see descent at other political rallies?

A He didn't come right out and mention anything about any signs, any posters.

Q But he left it up to your own discretion.

A Right. Anything that might cause disturbance inside.

Q I see. There's another thing I'd like to bring up. That is, you said that the defendant pushed you with his sign.

A Yes, sir.

Q You're under oath, now; you realize that.

A Yes, sir.

Q All right. You also mentioned that you thought that signs of this type should not be allowed into the stadium. Would you specify what you mean by "this type?"

A You mean in the words that was on the poster?

A No, I mean in the type of the—the type, the genre of the placcard or the poster. Was it because it was a descenting poster? Was it because it was a race poster? What was the

matter with this placcard that was not allowed to be taken in the stadium?

A Well, it was a protesting placard.

Q And because it was a protesting placcard–

A And due to the facts of this remarks that you had on this poster and remarks that were said inside and the rudeness and the manner that you was going about, this was the purpose of me placing you under arrest for Disturbing the Peace.

Q I see. Well, let me ask you some questions. In your own words, as you've been on the police force for some two years, no doubt you've arrested many people for disturbing the peace, what would you describe as being due charges for disturbing the peace?

A That covers a lot of territory.

Q Well, in a nutshell, what kind of behavior deserves to be arrested as disturbing the peace?

MR. ATKINSON: If it please the Court, he's already– the defendant has questioned this officer as to points of law and I think the Court can take judicial knowledge of what the ordinance on disturbing the peace provides. Now, it's up to the officer's discretion as to whether this type of conduct is in fact disturbing the peace, instead of giving him dissertation on what the ordinance provides.

THE COURT: The Court rules that the officer has the discretion to make his own mind up as to whether or not he should make an arrest. The officer does not try a case and, therefore, is not in a position to determine legally whether or not certain conduct constitutes it. However, he does have the responsibility to make a determination under circumstances at hand. As to whether or not he considers

the offense being committed as to whether he's right or whether he's wrong is something else. Insofar as any question concerning the legal requirements to establish a case is concerned on disturbing the peace, I consider this request an opinion the officer is not qualified to give. Now, if you want to ask him upon what facts did he base his decision, that would be all right.

A I would like to do that. Given that you have the discretion to arrest a man for disturbing the peace, in this case what criteria did you use to arrest the defendant?

A Like I said before, the reading that your poster carried—

Q One, the reading. He was carrying a sign which you thought was disturbing the peace.

A Very true. Two, was the remarks that was made inside of the stadium that "if the police let you go, what would happen if you came through."

Q This is the remarks that you're specifying that the defendant said.

A Right. At this time, the way we was stationed in the stadium field, we didn't have time to follow you around everywhere you went on the inside.

Q Are there any more reasons?

A The third reason is, for the third time I tried to be nice to you, in just as nice a manner as I could apply when you attempted for the third time to come through and the manner that you came through.

Q I see. Now, the defendant is charged with Disturbing the Peace. Is this what you said that he would be charged with firstly?

A Firstly, I said I would place you under arrest, and you asked me what would I place you under arrest for.

Q And what did you reply?

A I told you "Disturbing the Peace."

Q Was there a charge that you said previous to "Disturbing the Peace," previous to any comments about disturbing the peace which would indicate that you may arrest him for Disobeying a Police Officer? Did you say this?

A There was a possibility.

Q Well, did you say it or did you not say it?

A It's a possibility; I don't remember.

Q How was the—to change the subject—how was the defendant dressed as he was coming in the gate? Did he look suspicious or was he carrying—

A Casual.

Q Casual. Did he have a tie on and a shirt?

A A sport shirt.

Q Did he have a tie on?

A I think he did, yeah. What made it stand out was it was real obvious of all the other protestors marching peacefully over on Paul Russell Road and you showed up by yourself and the manner that you did.

Q Peaceably marching on Paul Russell Road as opposed to my showing up in the manner that I did. Was I loud or obnoxious—rather was the defendant loud or obnoxious in any way? Did he ever raise his voice louder than the way I'm speaking right now?

A No, you didn't.

Q Well, this given sign that said "Racism is Destroying America." Do you have this sign?

A No, I don't.

Q Do you know what happened to it?

A Evidently one of your friends—I don't know if he was your friend or not—when me and Sergeant Sullivan was taking you to the car, came up and snatched it out of your hands behind you and took off running.

Q Did you find this sign disagreeable to your person?

MR. ATKINSON: I object, Your Honor, to anything that involves him personally—Sergeant Beagles. This is a matter for him to determine as a police officer and not his personal beliefs on anything.

THE COURT: Objection sustained.

Q It has been said that signs of this type were not being allowed into the stadium. Were any signs allowed in the stadium?

A Any signs—

Q Any signs at all.

A If they came in they had them rolled up. It wasn't as visible as yours was. It wasn't as outstanding.

Q Where was the defendant carrying his sign when he entered the stadium?

A When he entered on the inside?

Q When—

A This position right here.

Q Was it not—remember carefully, now—was it not under his arm?

A It's a good possibility when you first came through the gate it was under your arm. After getting approximately fifteen foot inside of the gate it was in front.

Q I see.

A That's what stood out real well.

Q But you've stated that if signs did enter the gate, or rather the political rally, they were rolled up, concealed and were entered illegally?

A I didn't have time to check each one of them and unroll it and see what it contained or I didn't go through that procedure, but if one would have came through in the manner that you came through or holding it up in front of him or under a protest, was a different story, yes, sir.

Q But were signs being allowed in? Were other signs—

A To my knowledge, I don't remember any.

Q So this was the only sign that you saw and you saw to it or you felt that you had legal sanctions to disapprove of it being taken in.

A Yes, sir, under the conditions that it was under, yes, sir.

Q I see. Are you familiar with the first amendment to the Constitution of the United States of America?

MR. ATKINSON: If it please the Court, I object. It's a matter of law and this officer is not qualified to testify.

THE COURT: Sustained.

Q You've said previously that a Chief Bennett gave you orders to prohibit signs, any kind of signs, from being brought into this stadium.

A That it looked like possibly would cause trouble, yes, sir.

Q I see. Did you, before taking the defendant into custody, did you question a superior officer or other legal officer

as to what you should do with this young man that was attempting to get into the stadium?

A Yes, sir.

Q Who was this man?

A Mr. Hayward Atkinson.

Q And what did this man tell you?

A He advised me that "Disturbing the Peace" would cover it good under the conditions it was under.

Q Previous to this were you going to arrest the man for disturbing the peace or were you going to arrest him for disobeying a police officer?

MR. ATKINSON: Please the Court, I object to that as being immaterial as to what he was going to do. What he did is—

THE COURT: Objection sustained.

MR. CARLSON: I have no further questions.

Redirect Examination

BY MR. ATKINSON:

Q Sergeant Beagles, let me just ask you a couple other questions. Was there any disturbance at this political rally for George Wallace?

A Other than this, no, sir.

Q Did you have indications that there would be trouble if this man was admitted with this particular sign?

A Yes, sir.

Q What was that indication?

A Coming back to this group of people inside?

Q Yes, sir.

A Coming back to this group of people inside, it was some ten or twelve standing there on the first approach, and I again heard a remark that "if the police lets him through, I'm going to kick his ass." On the second approach, the crowd got a little bit larger, and on the third approach, it was a pretty good crowd, and when me and Sergeant Sullivan was taking him to the car, three or four of these people was following us.

Q I see. Now, if there were other signs permitted inside of the stadium did they cause any disturbance?

A No, sir.

Q But you had definite word or from your own observation there that if this sign was permitted it would cause a disturbance?

A Yes, sir.

MR. ATKINSON: No further questions.

MR. CARLSON: Your Honor?

Recross Examination

BY MR. CARLSON:

Q Do you have, here today, any witnesses that indicate that there was a crowd of people around the defendant that said that they would cause trouble?

A Yes, sir.

MR. CARLSON: No further questions.

MR. ATKINSON: Now, if it please the Court, I move that that last question and answer be stricken because it's not left up to Sergeant Beagles as to what testimony the City will put on, and that he's not in a position to testify as to any testimony the City will put on.

THE COURT: Motion denied.

MR. ATKINSON: I call Officer Murray.

THOMAS E. MURRAY

was produced as a witness and after having been first duly sworn by the Court, was examined and testified as follows:

Direct Examination

BY MR. ATKINSON:

Q State your name, please, sir.

A Thomas E. Murray.

Q Your occupation, sir?

A Police Officer, City of Tallahassee.

Q Were you such police officer on September the 20th of this year?

A Yes, sir, I was.

Q On that day were you assigned to special duty, Officer Murray?

A Yes, sir, I was.

Q And where was that assignment?

A Capital Field, Capital Stadium.

Q And what was the purpose of being assigned there? What was taking place that day?

A They were having a campaign rally for Mr. Wallace.

Q George Wallace?

A George Wallace.

Q Now, is Capital Stadium within the corporate limits of the City of Tallahassee?

A Yes, sir.

Q You've checked that out on the city map?

A Yes, sir.

Q Did you see this defendant on that particular day?

A Yes, sir, I did.

Q Where did you see him?

A I saw him at the entrance to the south gate at Capital Stadium.

Q What was he doing at the time that you saw him, Officer Murray?

A When I first observed him he had a sign holding it in front of him, at this kind of—

Q And what did the sign say?

A It said "Racism is Destroying my Country."

Q All right, sir, what did you do then, Officer Murray?

A I observed the sign and I observed the defendant and he came inside the gate. I asked the defendant if he would leave the sign outside, that it wouldn't do him or anyone inside any good by taking it in.

Q And what was his reply to you?

A He said that he had no intentions of taking it back outside; that he was going in with the sign.

Q All right, what happened then?

A I helped escort him back out the gate.

Q You and who else?

A Sergeant Beagles.

Q All right, sir, was there any conversation at that point?

A None that would bear on the case.

Q Did he attempt to get back into the stadium?

A He made the second attempt, yes, sir.

Q All right, what happened then?

A We advised him, or I advised him again that he could not come in with the sign.

Q And what was his reply?

A He said that he was coming in with the sign.

Q And what happened then?

A At that time we took him back outside again.

Q And talked to him further?

A Yes, sir.

Q What did you advise him at that time?

A Could I elaborate at this point?

Q Yes, sir, go right ahead.

A Well, on the second attempt that the defendant made to come inside, there were several to our rights, I'd say ten or twelve men that were there, evidently, were Wallace supporters, and they saw the trouble that we were having, saw the sign, observed the sign themselves, and they informed us that if he came in with the sign that they would do bodily harm to him.

Q Do you recall the words, Officer Murray, that were used, the exact words that you heard come from this group of ten or twelve people?

A There was a Mr. Miller there requested, or asked how much would it cost him, if the defendant brought that sign in, to just to kick his ass.

Q Did you anticipate trouble–

A Yes, sir, I did.

Q –if he was admitted with this sign?

A Yes, sir, I did.

Q Did you advise the defendant of it?

A I advised the defendant for his safety and for the safety of the people that were involved that it would be best if he left the sign outside.

Q All right, did he make a third attempt to come into the stadium with the sign?

A Yes, sir, he did.

Q What happened on that attempt?

A We placed him under arrest for "Disturbing the Peace."

Q Now, in what manner did he try to get into the stadium?

A A forceful manner.

Q A forceful manner.

A Yes, sir.

Q Did he push you or either Sergeant Beagles?

A Yes, sir.

Q Who did he push?

A He pushed the both of us.

Q Pushed the both of you and tried to go on in forceably.

A Yes, sir.

Q And it was after that that you placed him under arrest for Disturbing the Peace.

A Yes, sir.

Q All right, was he advised, at that time, of his constitutional rights?

A Yes, sir.

MR. ATKINSON: All right, no further questions.

THE COURT: Do you have any questions?

MR. CARLSON: Yes, Your Honor, I do.

Cross Examination

BY MR. CARLSON:

Q You say when you first saw the defendant he was holding the sign up in front of him.

A That's right.

Q When did you first see him? Inside the stadium, or outside the stadium, or going through?

A I saw you outside the stadium right at the entrance to the gate.

Q And you say he walked through with the sign up in front of him.

A Yes, sir.

Q Remember carefully; could he possibly have had it under his arm?

A No, he didn't.

Q He walked through with it up all the way.

A That's right.

Q Why didn't you stop him at the gate?

A It was not my judgment to stop you outside of the gate. I advised you that you could not come in with the sign.

Q Did not the defendant get a good twenty yards inside the stadium—and remember carefully—did not an officer say "Hey, boy, what do you have on that sign?"

A I didn't hear anything to that effect.

Q On a second attempt to get in the stadium, would you please describe for the Court the behavior of the defendant? Did he walk up to the gate? Did he run up? Did he struggle? Did he yell?

A On the second attempt, no.

Q He merely walked up.

A That's right.

Q Did he ask if he would be arrested if he entered?

A On the second attempt?

Q On the second attempt.

A That's right, he did ask.

Q Did you hear the reply of any of the officers there?

A I did not.

Q So you did not know if he would be arrested or if he would not be arrested or for what charges, is that—

A Reword your question.

Q You did not know if the defendant was to be allowed in, was to be disallowed in, was to be arrested, or was to be not arrested.

A The defendant was not refused entry at any time.

Q But he was ushered out.

A The defendant was not refused entry at any time but he was ushered out with the sign.

Q I see. Returning to the question—you did not know on what charges he would be arrested?

A Myself?

Q Yourself.

A After I gave—after I said to leave the sign outside, if you came back in with the sign or made any attempt to come in with it, by not leaving it outside I knew what charges you would be arrested for.

Q Did you hear Officer Beagles say that the defendant would be arrested for disobeying a police officer?

MR. ATKINSON: If it please the Court, I object to this as being immaterial as to what charges would be brought. It has no materiality on the thing.

MR. CARLSON: If the defendant is being charged for disturbing the peace and there were indications from the prosecution that it was disturbing the peace, I think that the charge that he was going to be charged with is very important.

THE COURT: It's part of the circumstances. Answer, if you know.

A To my knowledge, I would say no, that I did not hear that.

Q Were you standing with Sergeant Beagles?

A I was standing in the vicinity of Sergeant Beagles.

Q I see. And you say on the third attempt that he did struggle with you trying to get in? Did he put his sign down and struggle with his fists? Did he hold his sign up? Can you describe his behavior?

A I would say "struggle," I would call struggle anything to do anything more than pushing or pushing the police officers out of the way to gain entry, a forceful type. Not violent, but forceful.

Q How far into the stadium did he get? Did he actually get inside the fence before the officer said "you're under arrest?"

A He did.

Q Or did he just get to the gate?

A He got inside the stadium.

Q How far?

A Approximately twenty to twenty-five or thirty feet.

Q Inside, when he was arrested, the third time.

A The third time.

Q You're sure of that.

A I'm positive.

Q This is the time that they took him away—

A That's right.

Q —that he did not return, you say he was inside, twenty to thirty feet.

A He was inside approximately twenty to thirty feet.

Q When did you advise the defendant of his rights?

A After he was escorted out of the stadium. After he was placed under arrest.

Q Who advised him of his rights?

A Sergeant Beagles.

Q Was Sergeant Beagles informed, before he advised the defendant of his rights, that the defendant knew his rights

and he would remain silent, and then did Sergeant Beagles discontinue questioning the defendant?

A After you were escorted out—after the defendant was escorted outside, Sergeant Beagles—

Q Questioned the defendant?

A I have no knowledge of the questions.

THE COURT: Wait, wait just a minute. Sometimes when you get involved with trying to question people, especially on cross examination, the possible concept is that it's a good idea to press for answers and to interrupt, and this is probably due largely to the reputation or to the exposure on television of this kind of thing. The purpose of this hearing is to establish the facts, and I will be able to understand the testimony better, and I think everyone will understand what the testimony is, if you will allow the witness to answer the questions before you ask him a second question. Do you understand what I'm trying to say?

MR. CARLSON: I understand.

THE COURT: All right. Don't interrupt him in the middle of his testimony again. Don't require me to interrupt you again. Do you recall the last question?

A No, sir. Will you rephrase the last question?

THE COURT: Mrs. Reporter, would you read back the last question?

REPORTER: (Refers to notes.)

MR. CARLSON: The question I asked—if I may restate it. —

THE COURT: I've asked the reporter to read back the question.

REPORTER: "Question: Was Sergeant Beagles informed, before he advised the defendant of his rights, that the defendant knew his rights and he would remain silent, and then did Sergeant Beagles discontinue questioning the defendant?"

A He did advise him of his rights.

THE COURT: Was there anything else that you were attempting to say at that time?

A Outside the stadium, because he was out, escorted outside, Sergeant Sullivan and Sergeant Beagles took him away from the crowd.

THE COURT: Were you present?

A I had went back in and took my post on the inside.

THE COURT: You were not present at the time he was escorted out.

A From the time he was escorted outside to the time that he was talked to by Sergeant Beagles and Sergeant Sullivan away from the crowd and away from the stadium, I was not present, no sir.

THE COURT: You may inquire.

BY MR. CARLSON:

Q You say that Sergeant Beagles advised me of my rights.

A That's right.

MR. ATKINSON: If it please the Court, I object to this. There's no issue about anybody testifying to anything that

he had said after he had been advised of his rights. Whether he was even advised of it is immaterial.

THE COURT: I will have to agree with you.

MR. ATKINSON: There's no materiality in it.

THE COURT: Unless you have some particular reason?

MR. CARLSON: I think I may, if I may ask one more question.

Q Where was I advised of my rights?

A Inside the—Correction. On the outside of the stadium after you were taken out.

THE COURT: Now, Officer Murray, were you present at the time this occurred?

A Yes, sir. Immediately outside of the gate—just outside of the gate at the south entrance.

THE COURT: Any further questions.

MR. CARLSON: No further questions.

Redirect Examination

BY MR. ATKINSON:

Q Officer Murray, in your opinion as a police officer, was this man's conduct, as you have described it, disturbing the peace at Capital Stadium, on the morning of September the 20th, 1968?

THE COURT: I think I will have to intercede. I have ruled similarly on other questions by the defendant in this case and I think that—

MR. ATKINSON: I'll withdraw the question.

THE COURT: —if you will ask him upon what facts did he base his decision, I think that would be proper.

MR. ATKINSON: Yes, sir. I have no further questions. The City rests unless we have something in rebuttal.

THE COURT: At this time the City has rested and to give you the benefit of any procedural motion, the Court will state for the purpose of the record that it considers this a prima facie case made by the City. I think it is sufficient to override a motion for a directive verdict. If you want to, at this time, you may present any evidence. Which means that you can call any witnesses who are here today, you can give testimony yourself, or you may present any other evidence that you may have. If you give testimony yourself, of course, you will be under oath. Anything that you say can be used either for you or against you and, because of that, you are not required to take the stand nor or you required to make any statements. If you do take the stand as a witness, of course, you will subject yourself to cross examination, just as any other witness who testified. Do you understand what I have said to you this morning?

MR. CARLSON: Yes, Your Honor, I do.

THE COURT: How do you wish to proceed at this time?

MR. CARLSON: I would like to take the stand.

THE COURT: All right, come down here, please.

ROY DUANE CARLSON, JR.

appeared as a witness in his own behalf and after having been first duly sworn by the Court, gave the following testimony:

MR. CARLSON: I think the Court is aware of the facts and the events that happened at the political rally.

MR. ATKINSON: Please the Court, is he going to testify now, or is he going to argue the case?

MR. CARLSON: I'm going to testify. I'm going to give you my story.

THE COURT: Let's just lay a couple of groundrules so that I'll know what to expect and you'll know what to expect, too. In a case like this, when getting to defending yourself, it's hard to weed out what your testimony is and what your argument is. Now, testimony under oath is confined to the facts and circumstances which are material to the issues involved in the case. Now, your personal opinions or any arguments that you'd like to make can be made but they should be made at a later time so that I can make sure that I keep the two separate too. I'm here for two purposes—

MR. CARLSON: I see.

THE COURT: First of all, to decide what the facts are, and second, to decide if those are the facts, what's the significance. So let's try to keep them separate.

MR. CARLSON: All right. The facts: I did have the sign. It said "Racism is Destroying America." I did enter the stadium. The officers did usher me out. I saw no one around me or heard nothing that would indicate that there

would be trouble, although this isn't the point. Outside Officer Beagles told me that I couldn't go in with that sign and I asked the policeman outside "whose orders these were." The policeman next to Officer Beagles said "my orders." This was not acceptable to me. I realized that I had a constitutional right to do this, so I returned to the gate and I was escorted away from the gate. I told the police officers that I was going in; that I felt that I had a right to do this. Officer Beagles said I would be arrested for disobeying a police officer. This was unacceptable. So I told him that I was still going in. I felt that my rights were being quashed at the gateway to the stadium. Officer Beagles went aside and talked to the prosecution here for a few minutes and was, evidently, advised as to what to tell me. The prosecution told Officer Beagles to arrest me.

THE COURT: For the record, the "prosecutor" and the "prosecution" might be misinterpreted. Do you mean the person or do you mean—

MR. CARLSON: I mean a person, the prosecutor.

THE COURT: The prosecutor.

MR. CARLSON: Yes, sir. The prosecutor advised Mr. Beagles to arrest me for disturbing the peace. I wasn't loud; I didn't raise my voice; I never struggled with an officer; I never caused a scene. I never did anything in anyway that anyone could construe as disturbing the peace. Evidently, people were around and didn't like what I said, who would have disturbed the peace, but I was arrested. I was escorted from the stadium. I didn't struggle. I walked with them. Officer Beagles began to question me. I advised him that I knew my rights and that I preferred to remain silent. He then advised me of my rights, and from there its normal police procedure of photographing, fingerprinting, and so on. It seems like a real miscarriage

of justice that a man is arrested and taken into custody for expressing views that are contrary to what other people believe. That's all I have to say. In conclusion—

THE COURT: Just a minute. If you've finished there may be some questions that the prosecutor would like to ask.

MR. CARLSON: May I present some evidence before?

THE COURT: Yes.

MR. CARLSON: I have here two photographs taken by photographers of the Tallahassee Democrat of signs inside the stadium. The first photograph, there's a sign on a stick right behind a police officer. The second photograph indicates signs laying down on the grass next to the people who were carrying them; a Confederate flag, which would be construed also an an expression or descent. You can see them laying on the grass.

THE COURT: Where is this sign, please, sir?

MR. ATKINSON: I have no objection to the picture being—there's a stick sticking up there. I don't see a sign.

THE COURT: I can't make anything out of it.

MR. ATKINSON: I object to the introduction of both photographs; that they are immaterial and irrelevant; that this shows nothing whatsoever. Neither does the other photograph.

MR. CARLSON: The fact is that the officer—

THE COURT: I will allow the pictures into evidence but, for the record, this that you've referred to as a sign,

it may be a sign and then again it may be one of these markers they've got out at the stadium that says "Boosters sit here" or "Bands sit there." There isn't enough in the photograph to show me, and this other photograph doesn't indicate whether or not it is, in fact, a placcard, but—

MR. CARLSON: Your Honor—

THE COURT: I don't want to argue with you about it because all I can do is look at it.

MR. CARLSON: I have here some Super Eight movie film that was taken at this rally and this has pictures of signs and placcards all through the rally. Now, I can't present this at this time but I would like it to be made part of the evidence.

THE COURT: Well, with the stipulation there is no way for the Court to review it, I have no objection to you placing it into evidence.

MR. CARLSON: The point that I wanted to make—

THE COURT: Do you wish to place it into evidence?

MR. CARLSON: Yes.

MR. ATKINSON: If it please the Court, the City objects to it being placed into evidence. We don't know what it is. We can't base a sincere objection without—

THE COURT: I will allow him to place it into evidence for the purpose of identification and unless it is shown, or some way for it to be shown, there isn't any way to—I agree that you have no way to object to it or not object to it—

MR: CARLSON: The point that I–

THE COURT:–but I will allow it to go with the case.

MR. CARLSON: The point that I wanted to make from those photographs is that there were, evidently, placcards, posters and thing like this, expressions of political belief, in this rally and this is pertinent to the point that one given placcard or one given poster was prohibited from being taken into the rally because of what it said on it.

THE COURT: Is there any other evidence that you want to give or facts that you want to testify to?

MR. CARLSON: Well, let me say this: I have people who will testify on my behalf–

THE COURT: Wait just a minute. Are those people here?

MR. CARLSON: Well, I was getting to that. I put a great deal of implicit faith in the Court. I thought that I was so right that I wouldn't have to bother people with coming down here but I can, if it's within legal procedures, have people come here that will testify against what police officers have said here today. For example–

THE COURT: Just a minute, Mr. Carlson. I'm not going to get involved in evidence that you could or could not bring at this point. I'm concerned with the evidence that's presented here today. Now, by any logical interpretation of any proceedings, each side is limited to a degree as to what is to be presented, and let's concern ourselves at this point to your testimony concerning the facts. I will give you an opportunity to make a statement or argument later on, but you have put yourself on the witness stand and you've become a witness and I'd like

for you to complete your testimony so that if the City wishes to cross examine you, they will be given an opportunity to do so.

MR. CARLSON: Testimony completed.

THE COURT: Are there any questions?

MR. ATKINSON: Yes, sir.

Cross Examination

BY MR. ATKINSON:

Q Mr. Carlson, what was the purpose of you carrying this sign into the stadium?

A You asked a—

Q I'm asking you a question. You intended to incite trouble, didn't you?

A No, sir, I did not.

Q You knew this was a George Wallace gathering; you knew that was the purpose of it; and you went there with this sign to cause trouble, didn't you?

A No, sir, I did not.

Q All right, then, what was the purpose of you carrying a sign knowing that it was going to aggravate people?

A I am an American. I have a right, a God-given right, to express my opinion.

Q All right, sir, in a place that is rented and—

A In America.

THE COURT: Wait just a minute, gentlemen. You're going to have to take the questions one at a time and the answers one at a time. So, if you would, please, let's confine ourselves to questions and answers.

Q Mr. Carlson, do you have a God-given right to take a cat into a dog show, knowing it's fixing to cause trouble?

A I think you construing a law to concur with your opinion. I think that a man in America can stand up and say what he pleases. In New York—

Q Answer that question. What was your purpose of taking this sign to that gathering?

A I believe George Wallace is a racist. I do not like racists.

Q Will you answer the question that I asked you?

A As I do not like racists, I intended to express my views.

Q And you intended to cause trouble, didn't you?

A I did not intend to cause trouble. The people wanted to cause trouble with that sign. If people wanted to construe that as a meaning of trouble, they're perfectly willing to do so. But it would be they that would be causing the trouble and not I.

Q The fact is that you were not admitted with the sign, isn't that true?

A It's true.

Q The fact is that there was no trouble.

A That's true.

MR. ATKINSON: I've no further questions.

THE COURT: Fine. Is there anything further to be presented by either side? Any other witnesses?

MR. ATKINSON: The City rests, Your Honor. We have nothing in rebuttal.

MR. CARLSON: The defendant rests.

THE COURT: Now, at this time, is there anything that either one of you want to say before I--

MR. ATKINSON: I believe that the defense will have opening and closing arguments, if he so desires.

THE COURT: Is there anything that you want to say in argument?

MR. CARLSON: No, your Honor.

THE COURT: Come down and take the stand, please. Based on the testimony presented to me and the evidence received, the Court adjudges you guilty of the charge of Disturbing the Peace. Is there anything that you want to say before I impose sentence?

MR. CARLSON: Your Honor, we would like to appeal this, and for you to impose an appeal bond.

THE COURT: All right, sir. Is there anything that you wish to say before I impose sentence?

MR. CARLSON: None.

THE COURT: It's the judgment and the sentence of this Court that you pay a fine of two hundred fifty dollars or sixty days in the county jail. Now, you requested the supersedeas be set. Is there any requirement for supersedeas on an appeal like this?

MR. ATKINSON: I feel that there is, Your Honor. I think it's twice—Isn't it twice the amount of the—twice the amount of the fine.

THE COURT: I think that's what it's been in the past.

MR. ATKINSON: If I understand the supersedeas or the appellant law, it's twice the amount of the fine.

THE COURT: All right, supersedeas in this case will be set at five hundred dollars. That's twice the amount of the fine. See the officer outside and he will make arrangements with you for the posting of the bond.

(THEREUPON THE TRIAL WAS ADJOURNED.)

STATE OF FLORIDA)

COUNTY OF LEON)

I, BETTY KIRKLAND, Notary Public, State of Florida, At Large, do hereby certify that I reported the foregoing proceedings at the time and place and in the cause indicated in the caption in shorthand and by Gray Audograph recording; that I later reduced the same to typewriting and that the preceding pages, 1 through 54, inclusive, constitute a true and accurate transcription of the said proceedings had before me.

WITNESS my hand and official seal at Tallahassee, Leon County, Florida, this 29th day of October, A.D., 1968.

BETTY KIRKLAND

Notary Public, State of Florida at large
My Commission Expires March 3, 1969
Bonded By American Fire & Casualty Co.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1584

ROY DUANE CARLSON, JR.,
Petitioner,

vs.

CITY OF TALLAHASSEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEALS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. .....

ROY DUANE CARLSON, JR.,
Petitioner,

vs.

CITY OF TALLAHASSEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEALS

I.

JURISDICTION

Roy Duane Carlson, Jr. petitions this Court to issue a writ of certiorari to the Florida District Court of Appeals, First District to review its decision filed November

12, 1970 of *Carlson* v. *Tallahassee,* 240 So. 2d 866 appended hereto, certiorari denied per curiam by the Supreme Court of Florida February 4, 1971, 244 So. 2d 431 appended hereto. Jurisdiction is conferred upon this Court by 28 U. S. C. §1257 and the rule of *American Railway Express Co.* v. *Levee,* 263 U.S. 19 that the time to file certiorari to an intermediate state appellate court begins to run when the highest appellate court refuses to exercise jurisdiction.

II.

QUESTION OF LAW

Does the right of free speech allow the peaceful display of a sign at a public political rally which may antagonize the majority of spectators?

III.

STATEMENT OF FACTS

Petitioner attempted to display a sign "Racism Is Destroying My Country" and enter the municipally owned stadium (T. 5) while George Wallace was holding an open political rally on behalf of his candidacy for president (T. 13). Petitioner thrice (T. 19) refused to obey the instruction of the city police directing him to an area adjacent to the stadium set aside for protest (T. 20). The sign aroused threatening comments from about twenty spectators which caused the police, for the protection of the petitioner (T. 17, 19 and 20), to arrest him for disturbing the peace.

The constitutional defense was raised by the petitioner pro se on cross-examination (T. 38), testimony (T. 45) and argument (T. 46).

IV.

RECORD ON APPEAL

The District Court of Appeal denied petitioner's motion to have the record on appeal transferred to this Court. A copy of the transcript of testimony is filed with this petition.

V.

ARGUMENT

This Court should carefully scrutinize any limitation of free speech at a public political rally. The ultimate potential of the trespass rationale below will lead to the stifling of public dissent by the simple expediency of favored groups being able to reserve all suitable public facilities. The trespass rationale is contrary to the principles established in *Marsh* v. *Alabama,* 326 U.S. 501 and *Food Employees* v. *Logan Valley Plaza,* 391 U.S. 308 that private property open to the public is protected by the Constitution.

Assuming arguendo that the sign "Racism Is Destroying My Country" is a direct attack upon George Wallace, the opinion below is contrary to the cases of *Bachellar* v. *Maryland,* 397 U.S. 564, *Terminiello* v. *Chicago,* 337 U.S. 1, *Cox* v. *Louisiana,* 379 U.S. 536, *Near* v. *Minnesota,* 283 U.S. 697 all holding that expressions hostile to the recipients are equally protected by the Constitution.

The effort of the court below to imply a reversal would constitute a ruling that a person may speak his mind anywhere or under any conditions, and to equate the sign with law applicable to fighting words or abusive language illustrates their lack of concern with the Constitutional protection, and unless reversed here will stand

as a precedent that the Constitution is protected only to the extent that courts cannot circumvent it by meaningless logic.

WHEREFORE petitioner prays this writ be issued

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and
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Miami, Florida
Attorneys for Petitioner

(CAPTION OMITTED)

OPINION

SPECTOR, J.

By petition for writ of certiorari, Roy Duane Carlson, Jr., seeks review of a judgment of the Circuit Court for Leon County, Florida, affirming his conviction in the Municipal Court of the City of Tallahassee on charges of "disturbing the peace" in violation of a city ordinance. No attack was made below or here on the validity of the ordinance.

The judgment of the circuit court recites that the following two questions were presented in petitioner's appeal to that court from the municipal conviction, viz: "(1) the sufficiency of the evidence to justify a conviction when the facts are viewed in the light of the constitutional rights of the defendant under the first amendment to the Federal Constitution, and (2) the alleged excessiveness of the punishment imposed." The latter ground relating to the punishment, although decided adversely to petitioner below is not raised in this certiorari proceeding.

The incident which resulted in the charges against petitioner occurred at municipally-owned Capital Stadium in Tallahassee. The stadium had been rented to the supporters of a presidential candidate, George Wallace, for the purpose of holding a political rally in support of his candidacy. The same stadium is rented from time to time to various private organizations, including political organizations.

On the day in question, city police were assigned to duty at the stadium on the combined orders of the Chief of Police and a United States Secret Service man assigned

to Mr. Wallace by the federal government for security purposes. The police were instructed to bar persons carrying signs which would tend to "create trouble" from entrance into the stadium. An area outside and adjacent to the stadium was made available for the use of persons who wished to rally or demonstrate in opposition to Mr. Wallace's presidential aspirations. The record indicates that the said area was in fact used by numerous persons to express their lack of support for Wallace. Mr. Carlson, petitioner herein, apparently was not willing to voice his opinions in the adjacent area set aside for that purpose. Instead, petitioner entered the gate to the stadium proper and, once inside, unrolled a sign he had been carrying which bore the legend, "Racism is Destroying My Country". Petitioner was ushered out twice by the police upon being advised that he could stay but that the sign could not be displayed by him. Ultimately he attempted to force his way inside past the gate guards with the sign. Although he was not violent, he apparently did exert some force. At this time, petitioner was arrested and charged with disturbing the peace.

Petitioner contended below, as he does here, that he had a constitutional right to display his sign of protest and to enter the stadium for that purpose. The circuit court rejected this argument and we agree. In its judgment, the circuit court stated in part:

> "The stadium had been leased, although temporarily, to persons desiring to use it for a particular purpose. The appellant is not shown to have had permission from those who had leased the stadium to display his sign in this stadium. On the contrary, the evidence indicates that the display of the sign in the stadium would definitely be contrary to the purposes for which the stadium was rented."

For reversal, petitioner relies on the proposition that the First Amendment of the United States Constitution assures him the right to carry a poster indicating his political views anywhere he wishes—even if such views may tend to antagonize the majority of persons around him. There is, of course, much to this contention. But there are some factors in his contention that render the thesis vulnerable. While the decisions properly construe first amendment speech rights in the broadest sense, we do not understand it to be the holding of any authoritative tribunal that a person may speak his mind *anywhere* or under *any conditions*. This contention was forcefully rejected by the United States Supreme Court in Adderley v. Florida, 385 U.S. 39, 17 L. Ed. 2d 149, 87 S. Ct. 242, in which the Court held that the belief that people who wish to propagandize protests or views have a constitutional right to do so whenever, however, and wherever they please is fallacious. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases relied on by the appellants in Adderly, supra. The same cases, Cox v. Louisiana, 379 U.S. 536, 13 L. Ed. 2d 471, and Cox v. Louisiana, 379 U.S. 559, 13 L. Ed. 2d 487, are relied on by petitioners here.

The incident giving rise to the charges against the petitioner herein resulted from petitioner's effort to interfere with a political rally or meeting organized to promote the candidacy for public office of a citizen of this country. To this end the candidate's supporters rented a facility from the City of Tallahassee and, having thus had the facility set aside for their use, they were entitled to use it free from disruption by those who held views of their own. It matters not whether the views of a person who intrudes and disrupts a political meeting in a facility which has been lawfully set aside for use by a group of political

partisans are commendable; nor does it matter that the uninvited views of the intruder support or oppose the candidacy of the person in question. The overriding consideration is the fact that Mr. Wallace is entitled to freedom of speech under the First Amendment every bit as much as the petitioner is. Mr. Wallace reserved the stadium so as to exercise that right. The petitioner did not. Instead, the latter sought to interfere with the orderly processes whereunder the stadium was allocated to all and sundry for their respective purposes. Nowhere in the record before us is there any indication that petitioner was refused the use of the stadium for his purposes at some other time which would not interfere with another's right to the same freedom of speech for which petitioner clamors so loudly.

Petitioner's contention that he can speak while another citizen already has the floor can only serve to diminish the right of both to the unfettered exercise of constitutional freedoms.

The notion that freedom of speech is absolute and not subject to reasonable regulation by the state has often been rejected. Even laymen are well familiar with Mr. Justice Holmes' admonition that "The most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing panic". Schenck v. United States, 249 U.S. 47, 52, 63 L. Ed. 470, 473. Only recently, the highest court in the land reiterated an earlier decision, Fox v. Washington, 236 U.S. 273, 59 L. Ed. 573, 35 S. Ct. 383, holding that the state may punish a person for encouraging the commission of a crime. Cox v. Louisiana, supra. In the Fox case, the court had before it an assault on a State of Washington statute on the grounds that the statute violated the defendant's first amendment free speech rights. The said statute was as follows:

> "Every person who shall wilfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document, or written or printed matter, in any form, advocating, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace, or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice, shall be guilty of a gross misdemeanor; . . ." Rem. & Bal. Code, §2564.

Thus the Supreme Court has held that not even the First Amendment may be construed so broadly as to permit a person to encourage any person to commit a crime under the claim of freedom of speech. Although the Florida Legislature has not enacted a law of this kind, we refer to the Fox case and the statute there involved to show that only recently the Supreme Court has approved reasonable regulation of speech, the First Amendment notwithstanding. Similarly approved by the Supreme Court only recently in Cox v. Louisiana, supra, is a New Hampshire statute prohibiting any person from addressing any offensive, derisive or annoying words to any other person lawfully on any street or public place or calling him by any offensive or derisive name. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S. Ct. 766. In that case, the court held the statute valid against first amendment assaults and upheld the conviction of a person charged with calling a city policeman "a goddamned racketeer" and "a damned facist". In Cox, supra, the court classified such abusive language as "fighting words" and held the utterance of them to be punishable.

In the case at bar, of course, the charges were predicated on the defendant's insistence that he be permitted to display his placard with its message at a time and place lawfully reserved by others for the purpose of exercising

their first amendment rights. Had petitioner displayed his placard in the place provided adjacent to the stadium, he could not have been lawfully arrested merely because of the words written on his placard. The First Amendment protects his right to convey his thoughts and beliefs in any public place. But, he must exercise that right so as not to infringe upon the exercise by another of the same right. Stated differently, one's first amendment rights end where the same rights of another begin.

We have examined the cases advanced by petitioner in support of his contention and find that they support the judgment of the court below. For example, in Taggart v. Weinacker's, Inc., 397 U.S. 223, 25 L. Ed. 2d 240 (1970), the United States Supreme Court recognized that freedom of speech is a relative right and not absolute, as petitioner contends. There the court stated, at page 242:

> "The exercise of first amendment rights may be regulated where such exercise would unduly interfere with the normal use of public property by other members of the public with an equal right of access to it."

Petitioner's reliance upon Bachellar v. Maryland, 25 L. Ed. 2d 570 (1970), is unavailing. The incident giving rise to Bachellar's arrest did not involve an attempted trespass upon public property *which had been reserved for a private meeting.* On the contrary, it occurred on an open sidewalk in front of a United States Army Recruiting Station in downtown Baltimore. There the court recognized that the convictions of the demonstrators could constitutionally have rested on a finding that they sat or lay across a public sidewalk with the intent of fully blocking passage along it or that the conviction could constitutionally have rested on a finding that the demonstrators refused to obey police commands to stop obstructing the sidewalk and refused to move on. The court reversed

however, not because the demonstrators were entitled to engage in the foregoing conduct, but because the jury might have convicted under the instructions given to the jury simply because the views of the demonstrators were offensive to some of the hearers.

The commendable views sought to be expressed by petitioner's placard are the subject of legitimate expression in this land which dearly honors the right of every man to speak his mind. But, this is a right reserved to every man—not to petitioner alone. Under the circumstances reflected in this record, we hold that petitioner unlawfully attempted to interfere with the exercise of first amendment rights by the persons who reserved the stadium for their meeting, thus was guilty of disturbing the peace as charged when he forceably attempted to enter the stadium. Such conduct is also expressly made violative of a state statute, Section 871.01, Florida Statutes, which prohibits the wilful interruption or disturbing of any assembly of people met for any lawful purpose in this state. The rule respecting the interpretation of said statute is found in 4A Fla. Jur., Breach of Peace, etc., §8, Disturbing Meetings, as follows:

> "An offense which falls within the general concepts of a breach of the peace or disorderly conduct and is prohibited by statute is the wilful interrupting or disturbing of . . . any assembly of people . . . for any lawful purpose. The statute leaves open for judicial decision several questions . . . what constitutes an unlawful interruption or disturbance of such a meeting or assembly may be said to depend somewhat upon the nature and character of each particular kind of meeting, the purposes for which it is held, . . . conduct which, being contrary to the usages of the particular sort of meeting and class of persons assembled, interferes with its due progress or annoys the assembly in whole or in part, is a disturbance."

We hold that the petitioner has failed to demonstrate that the court below departed from the essential requirements of law in rendering its judgment and accordingly deny the petition for writ of certiorari.

CARROLL, Donald K., ACTING CHIEF JUDGE; and WIGGINTON, J., CONCUR.

Roy Duane CARLSON, Jr., Petitioner,

v.

CITY OF TALLAHASSEE, Respondent.

No. 40477.

Supreme Court of Florida.

Feb. 4, 1971.

Certiorari denied. 240 So.2d 866.

CARLTON, ADKINS, McCAIN and DEKLE, JJ., concur.

ERVIN, C. J., dissents.

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Supreme Court of the United States

OCTOBER TERM, 1970

No. 1584

ROY DUANE CARLSON, Jr.,

Petitioner,

vs.

CITY OF TALLAHASSEE,

Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL

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REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL

I.

JURISDICTION

Respondent accepts petitioner's statement of jurisdiction.

II.

ISSUE

Whether a citizen has a constitutional right to force his way into and to display a provocative sign in a facility leased for the expression of political views by another citizen, when the display of such sign causes a serious threat of violence, and when an adjacent area has been set aside for the free expression of all opposing views.

III.
STATEMENT OF FACTS

Capital Stadium, located in Tallahassee, Florida, had been leased for the day and time of the petitioner's arrest to "Americans for Wallace" (T 4, 5 & 7). Petitioner attempted on three occasions to enter the stadium carrying a sign reading "Racism is destroying my Country" (T-17). Police officers assigned to duty at the stadium had been instructed by the United States Secret Service, which was assigned to Governor George Wallace, not to permit anything that looked like it might cause trouble (T-17).

Petitioner was advised by police officers of the City of Tallahassee that he would be arrested if he attempted to enter Capital Stadium carrying his sign (T-18), and was also advised by a police officer that, "I would like for you to leave the sign outside and go in like everyone else." (T-17).

When the petitioner tried to enter the stadium, a crowd began to gather. Several people actually threatened violence to the petitioner, and statements were made by members of the crowd to the effect that if the petitioner was admitted with the sign there would be a fight (T-18). On his third attempt to enter Capital Stadium, the petitioner did so by the use of force in pushing a police officer (T-34 and 35).

Thereupon the petitioner was arrested and charged with "Disturbing the Peace." The petitioner was convicted of this charge by a Judge sitting without a jury in the Municipal Court of the City of Tallahassee, Florida, and was fined $250.00.

A place had been provided adjacent to the stadium and upon the stadium grounds for those who wanted to demonstrate against the candidacy of Mr. Wallace. That place was in fact used by a large number of people opposing the candi-

dacy of Mr. Wallace, and they received police protection by the Police Department of the City of Tallahassee, Florida during their protest. This demonstration was without incident. (T-18 & 19).

IV

RECORD ON APPEAL

Respondent admits that the District Court of Appeal denied petitioner's motion to have the record on appeal transferred to this Court; however, the Respondent was advised that it could obtain a copy of the transcript and have the same certified by the Clerk of the District Court of Appeal. The respondent in its Appendix is furnishing this Court with the Trial Transcript. Petitioner has furnished the respondent with nothing other than his brief.

ARGUMENT

It should be recognized from the outset that this case does not involve a conviction for trespass or the interpretation of a trespass statute. Thus, Petitioner's repeated reference to the "trespass rationale below" has no basis in the record of this case. Petitioner was not charged with or convicted of trespass. Instead, he was given full and free access to the stadium on the same basis as all other persons in the audience. Not content to use the stadium on this basis, Petitioner insisted on displaying a very provocative sign calculated to arouse the passions of the audience. After Petitioner was repeatedly asked not to display this antagonistic sign, and after Petitioner tried to force his way into the stadium with the sign, he was arrested—not for trespass, but for disturbing the peace. To fully understand the basis for this arrest and the constitutional context in which this case arose, the following undisputed facts should also be recognized:

(1) At the time of Petitioner's arrest, the stadium was under lease to "Americans for Wallace," for the presentation of a speech by their presidential candidate, George C. Wallace;

(2) Following Petitioner's initial display of the sign, approximately twenty spectators threatened violence if Petitioner continued to display the provocative sign;

(3) Police officers assigned to duty at the stadium had been instructed by the United States Secret Service, which was assigned to Governor Wallace, not to permit anything that looked as if it might cause trouble or possible injury to the Governor and presidential candidate; and

(4) An area on the stadium grounds directly adjacent to the site of Candidate Wallace's speech had been provided for those who wished to demonstrate against the candidacy of Governor Wallace, which area was in fact used by a large number of people opposing the candidacy of Mr. Wallace, all of whom received police protection by the Respondent's Police Department during their protest, which continued throughout Governor Wallace's speech without incident. Petitioner was arrested only after the police recognized that his conduct had resulted in a very real threat of violence, which could easily have resulted in the total disruption of Candidate Wallace's speech, thereby totally frustrating the purpose for which the stadium had been leased.

With this understanding of the basic facts of the case at Bar, we can now analyze the cases cited by Petitioner in support of his petition for certiorari. The first two cases cited by Petitioner are *Marsh v. Alabama*, 326 U.S. 501, and *Amalgamated Food Employees v. Logan Valley Plaza*, 391 U.S. 308, neither of which are applicable to the instant case. The *Marsh* case involved a situation in which a private corporation owned and governed an entire town. This town was no different from most other towns, except that its government was conducted

through the private corporation rather than through a municipal corporation as is usually the case. All areas of the town were open and accessible to the traveling public, the town being located adjacent to a four-lane public highway. The Appellant, Grace Marsh, was arrested and convicted of criminal trespass for distributing religious literature on the sidewalk near the post office. On appeal, this Court reversed, holding such arrest and conviction to be violative of the constitutional guarantees of freedom of the press and freedom of religion. In reversing, this Court pointed out that there was very little difference between the citizens of a town operating their government through a private corporation and their operating such government through a municipal corporation. This court noted that affirmance of the Appellant's conviction would be tantamount to approving the denial of freedom of the press and religion to vast numbers of American citizens who live in company towns, such as the coal mining towns of Kentucky and West Virginia.

The *Marsh* case differs from the case at Bar in at least the following respects:

(1) The present case does not involve any question of freedom of religion;

(2) The present case does not involve an arrest and conviction of criminal trespass;

(3) The present case does not involve an attempt to restrict freedom of expression throughout an entire town; instead, the Respondent, a municipal corporation, set up an immediately *adjacent* area specifically for the expression of opposing views, so that all citizens would be granted their right of free expression; and

(4) The present case involved a very real threat of violence which could have well prevented the free expression of views

by another citizen, to-wit: Candidate Wallace, who had leased the stadium for the specific purpose of expressing his views, while the conduct in *Marsh* was totally non-violent and did not pose a threat to the freedom of any other citizen.

The next case cited by Petitioner under his "trespass" argument is *Amalgamated Food Employees Union Local 590 et al. v. Logan Valley Plaza, Inc., et al.*, 391 U.S. 308. That decision involved the picketing of a super market located in a very large shopping center, the perimeter of which exceeded one mile. The number of pickets varied between four and thirteen, and averaged around six. The picketing was conducted almost entirely in the market's parcel pick-up area and in that portion of the shopping center parking lot immediately adjacent to such parcel pick-up area. The picketing was peaceful and was accompanied by no threats of violence, and congestion of the parcel pick-up area occurred very infrequently. The lower Court issued an injunction restricting the picketers from picketing and trespassing upon the super market's parcel pick-up area or any area in the shopping center. This injunction was affirmed by the Pennsylvania Supreme Court on the sole ground that the conduct of the picketers constituted a trespass on the property of the super market and the shopping center.

On appeal this Court reversed, holding that the state's generally valid trespass laws could not be used under these circumstances to restrict the picketers' right to peaceably assemble on property which was open and accessible to the general public. In so holding, this Court quoted extensively from *Marsh,* and relied heavily upon the constitutional rationale set forth in *Marsh,* pointing out that there was a great similarity between the shopping area in the company town involved in *Marsh,* which was open to the general public, and the shopping center owned by Logan Valley Plaza, Inc., which was also open to the general public. This Court was also careful to note that the conduct of the picketers was totally nonviolent, just as the conduct of the Petitioner in *Marsh* was

also totally non-violent. Thus, the *Food Employees* case is distinguishable from the case at Bar for the same reasons that the *Marsh* decision was distinguishable, as set forth above under the discussion of *Marsh.*

The only other cases cited by Petitioner are *Bachellar v. Maryland,* 397 U.S. 564; *Terminiello v. Chicago,* 337 U.S. 1; *Cox v. Louisiana,* 379 U.S. 536; and *Near v. Minnesota,* 283 U.S. 697, all of which are cited for the broad, general proposition that "expressions hostile to the recipients are equally protected by the Constitution." The Respondent agrees that free expression may not be restricted simply because some of the views being expressed are offensive to some of the recipients of such views; however, the Respondent would respectfully show that this general proposition has no application to the instant case and that the cases cited by Petitioner in support of this proposition are clearly distinguishable from the case at Bar.

The *Bachellar* case did not involve an attempted trespass upon public property which had been reserved for a private meeting. On the contrary, it occurred on an open sidewalk in front of a United States Army Recruiting Station in downtown Baltimore, Maryland. In *Bachellar,* this Court recognized that the convictions of the demonstrators could constitutionally have rested upon a finding that they sat or lay across a public sidewalk with the intent of blocking passage along it, or that the conviction could constitutionally have rested upon a finding that the demonstrators refused to obey police commands to stop obstructing the sidewalk. This Court reversed, however, not because the demonstrators were entitled to engage in such conduct, but because the jury's verdict could have been based upon an erroneous instruction. This Court in *Bachellar* specifically noted that the trial Judge instructed the jury that "disorderly conduct is the doing or saying or both of that which *offends, disturbs,* incites or intends to incite a number of people gathered in the same area." (*emphasis*

added) On these facts, and in light of this clearly erroneous instruction, this Court held the convictions of Bachellar and his co-defendants could not stand; but there is nothing in the case at Bar to even suggest that Petitioner's conviction could have been based upon the mere expression of unpopular views in a public place. Instead, the evidence is clear that his arrest and conviction was based solely upon his attempt to force his way into the privately leased stadium, as compounded by the clear threat of violence caused by this conduct.

The *Terminiello* case, *supra,* involved a situation in which Terminiello had rented an auditorium for the purpose of making a speech criticizing various political and racial groups whose activities he denounced as contrary to the nation's welfare. Other political groups, who were kept outside the auditorium, strongly criticized and protested Terminiello's speech, causing a disturbance which required police intervention. After his speech, Terminiello was arrested and charged with disorderly conduct under a Chicago city ordinance. At trial, the trial Judge instructed the jury that this ordinance was violated if defendant's speech "stirred people to anger, invited public dispute or brought about a condition of unrest."

On appeal, this Court reversed, holding that this instruction rendered the statute constitutionally invalid as applied to Terminiello, and that Terminiello could not be convicted of disorderly conduct simply for making a speech that invited public dispute or brought about a condition of unrest. However, when one compares *Terminiello* with the case at Bar, it becomes apparent that this decision just as aptly could be cited as support for the Respondent's actions in the instant case. The Respondent, City of Tallahassee, was trying to protect the right of Candidate Wallace to make his speech in a privately leased stadium, just as this Court held Terminiello was entitled to make his speech in a privately leased auditorium. The Respondent's Police Department attempted to assure this freedom of speech by providing an adjacent area for the expres-

sion of contrary views, thereby separating the opposing factions to minimize the chance of serious disturbance which could prevent either view from being heard. The same basic procedure was followed by the Chicago city police in *Terminiello* when they kept the protestors outside the auditorium in which Terminiello was speaking, a practice which found no disfavor with this Court in its decision in *Terminiello*. Instead, the sole constitutional defect in *Terminiello* was the jury instruction making it a crime merely to invite public dispute or to create a condition of unrest. In the present case, there was no jury and, therefore, no instruction to a jury; and there is no indication whatsoever that Petitioner's conviction could have been based upon the mere creation of public unrest.

In *Cox v. Louisiana, supra,* a civil rights leader was convicted of breach of the peace, obstructing public passages, and picketing before a Courthouse. The evidence in *Cox* clearly showed that the assembly by Cox and his followers was peaceful and orderly, but that Cox was arrested when he and his followers exceeded their allotted time for demonstrating. On appeal from his conviction, this Court reversed, holding that the breach of the peace statute, as construed by the state Court's definition of breach of the peace to mean "to agitate or disquiet," was unconstitutionally broad in scope, in that it allowed punishment merely for peacefully expressing unpopular views, and that his conviction for obstructing a public passage and picketing before a Courthouse was an unwarranted abridgement of his freedom of speech and assembly because the city authorities had the unbridled discretion to allow or disallow public meetings, and to set time limits for such meetings without regard to any reasonable standards, and without regard to any public duty. This Court in *Cox* repeatedly noted that city officials have both a duty and a responsibility to keep the peace and promote public safety. This Court's reversal obviously was not intended as a limitation on this duty and responsibility, but was simply an expression that personal rights and constitutional liberties may not

be restricted unless such restriction bears a reasonable relationship to the government's duty and responsibility to keep the peace, promote public safety, or some other valid governmental function. Obviously, the rationale of *Cox* has no bearing on the instant case, since the Respondent's actions were in pursuit of a valid governmental function, *i.e.*, the keeping of peace and order as a means of allowing all views to be openly expressed.

In *Near v. Minnesota, supra,* the last case cited by Petitioner in support of his argument, a newspaper entitled the "Saturday Press," repeatedly published editorials attacking certain local officials, including the local prosecuting attorney. This local prosecuting attorney then filed suit to enjoin and abate publication of the newspaper as a "public nuisance." After a trial, an injunction against further publication of the newspaper was put into effect. On appeal, this Court reversed, holding that such action violated freedom of the press as guaranteed by the United States Constitution. In so holding, this Court pointed out that actions of public officials were always open to public scrutiny and that the remedy for any abuses by the press should be found in the libel laws, not through the wholesale abatement of an entire newspaper as a public nuisance.

Obviously, the *Near* decision has no bearing on the case at Bar. The Respondent, City of Tallahassee, has made no attempt to enjoin or restrain the freedom of the press. Instead, the Respondent has simply tried in good faith to assure that *all* views could be freely expressed without any violence or public disturbance, which could restrict such free expression.

The Respondent does not minimize the delicacy or the seriousness of the constitutional issues raised by this case. The Respondent has been and continues to be fully aware of its duty and responsibility to allow the free expression of opposing views. However, the Respondent is also fully aware of its duty and responsibility to preserve the peace and thereby

provide an atmosphere in which such opposing views can be freely expressed by all citizens. When George Wallace, who is a somewhat volatile speaker himself, scheduled a political speech for Capital Stadium, the Respondent was charged with a public responsibility to preserve order so that this speech could be presented, especially since the stadium had been specifically leased by a private group for this purpose. The Respondent was also charged with a public and constitutional duty to allow free expression by those opposed to the views and candidacy of Mr. Wallace, even those violently opposed. To solve this apparent dilemma, the Respondent provided a forum for such opposing views on the stadium grounds immediately adjacent to the site of Candidate Wallace's speech. From the record, it appears that violence was avoided and that all views, representing opposite ends of the political spectrum, were freely expressed. Thus, the Respondent was able to discharge both its public and constitutional duties, to-wit: the preservation of order and the allowance of free expression of contrasting views.

If, however, the Respondent had allowed Petitioner and the other protesters to force their way into the stadium, the record shows that emotions were running so high that the result could well have been a riot, or at least a serious public disturbance, which could have prevented *anyone* from being heard. In this event, the Respondent would have failed in both of its public and constitutional duties, *i.e.*, the peace would not have been preserved and the Respondent would not have provided an adequate forum for the expression of opposing views.

The Respondent respectfully submits that there is no decision of this Court which required the Respondent to follow the latter alternative discussed above. Certainly, none of the decisions cited by Petitioner required such procedure. There are, however, many decisions of this Court which indicate that the Respondent was constitutionally correct in following the first alternative discussed above.

One such decision is *Taggart v. Weinacker's, Inc.*, 397 U.S. 223, in which this Court specifically recognized that freedom of speech is not absolute but is a relative right which may be regulated in furtherance of a valid public purpose. Specifically, this Court held:

> "The exercise of First Amendment rights may be regulated where such exercise would unduly interfere with the normal use of the public property by other members of the public with an equal right of access to it." Id at 242.

The rationale of this holding is especially applicable to the instant case in which Petitioner was attempting to interfere with the normal use of public property which had been leased to a private group for use by that group.

The *Taggart* holding quoted above is merely a restatement and affirmance of the same general principal of constitutional law set forth in prior holdings of this Court. For example, see: *Adderley v. Florida*, 385 U.S. 39; *Cameron v. Johnson*, 390 U.S. 611; *Cox v. New Hampshire*, 312 U.S. 569; *Poulos v. New Hampshire*, 345 U.S. 395; *Kovacs v. Cooper*, 336 U.S. 77. In *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, this Court expressed this general constitutional principal as follows:

> "It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." Id at 502.

One common thread running through the cases cited by Petitioner as well as the additional cases cited in this brief has been the necessity of this Court applying a balancing test in order to properly resolve the delicate constitutional issues presented in each of these cases. In each case this Court has been called upon to balance the personal or constitutional

rights sought to be protected against the public rights or the private rights of another individual which were brought into conflict. In those cases relied upon by Petitioner, this Court correctly found that there was no valid public right or any conflicting private right sufficient to justify the deprivation of personal or constitutional liberties involved in each of those cases. However, in balancing such conflicting rights in each of the cases relied upon by Respondent, this Court found sufficient and overriding conflicting rights to justify the restrictions on other personal liberties involved in each of those cases; such conflicting rights in these cases took the form of either the state's right to preserve the peace and safety of its citizens or the right of some other individual citizen to exercise his civil rights.

When we bring the application of this balancing test forward to the case at Bar, we find that the Respondent, in effectuating the very minor deprivation of Petitioner's personal liberties, was actually trying to protect and preserve both categories of conflicting rights recognized by this Court in the cases relied upon by Respondent; that is, the Respondent was attempting to preserve the peace and protect the safety of its citizens from a riot or public disturbance while, at the same time, attempting to preserve the civil right of another citizen to express his views in a stadium which had been specifically leased for the expression of such views. Thus, it becomes apparent that, in the instant case, there were sufficient overriding considerations to justify the actions taken by Respondent.

If Petitioner's constitutional theory were accepted and carried to its logical conclusion, it would be very difficult for a private group to lease a facility for the presentation of views by a controversial speaker, such as Candidate Wallace, since an opposing philosophical faction could effectively prevent the expression of such views simply by invading the facility and causing a disturbance sufficient to prevent the presentation of any scheduled speeches. The Respondent in the present

case attempted to avoid such a denial of free expression by providing adequate forums for both philosophical groups with adequate police protection to assure that all views could be heard. Respondent now respectfully submits to this Court that such procedure is not prohibited by the Constitution and that Respondent has not violated Petitioner's First Amendment rights.

CONCLUSION

For the reasons stated above, Petitioner's petition for writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

I do hereby certify that three (3) copies of Respondent's Reply to Petition for Writ of Certiorari to the Florida District Court of Appeal and Appendix has been furnished to Maurice Rosen, Esq., c/o ACLU of Florida, 16924 N. E. 19th Avenue, North Miami Beach, Florida, and Richard Kanner, Esq., 1150 N. W. 14th Street, Miami, Florida, attorneys for Petitioner, by mail, this ..... day of May, A. D. 1971.

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